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No. 83-1803

In The
Supreme Court of the United States
October Term, 1983

CALIFORNIA,

Petitioner,

vs.

DAVID G. COHEN,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION ONE

BRYAN R. GERSTEL
KAREN J. HEADLEY
DUKE, GERSTEL, SHEARER
& BREGANTE

A Partnership and Professional Corporation

P.O. Box 85470
101 West Broadway, Suite 400
San Diego, California 92138-5470

Attorneys for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 835-7427 Ext. 333

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QUESTIONS PRESENTED

Whether the California District Attorney's Office has standing to represent Petitioner and the authority to enforce a Pennsylvania judgment for support arrearages on behalf of non-resident adults.

Whether the California Statute of Limitation for enforcement of support orders may bar the enforcement of a Pennsylvania judgment for support arrearages.

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

DAVID G. COHEN, the Respondent herein, prays that Petitioner's Writ of Certiorari to review the judgment of the California Court of Appeal, Fourth Appellate District, Division One, entered in the above-entitled case on December 2, 1983, be denied.

OPINION BELOW

The opinion of the California Court of Appeal, Fourth Appellate District, Division One, (hereinafter, "Opinion") is reported at *Morris v. Cohen* (1983) 149 Cal.App.3d 507; 196 Cal.Rptr. 834, and is printed in Petitioner's Brief, Appendix "A" attached thereto at p. A-1. The judgment of the California Supreme Court, denying a Petition for Hearing without opinion is printed in Petitioner's Brief, Appendix "B", attached thereto, at p. A-27.

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STATEMENT OF THE CASE

As summarized by the California Court of Appeal, Fourth Appellate District, Division One, the pertinent facts are as follows:

> David G. Cohen (David) and Doris Cohen Morris (Doris) were Pennsylvania residents, married there in 1950. Two children were born. The parties separated in 1959, and on October 2nd of that year, David was arrested in Pennsylvania and ordered to pay $50 per week for support of Doris and the children. David then posted a $1,000 bond with the Court to ensure his compliance with the support order and moved to California, where he has since resided. He made seven partial payments on the support order. On September 30, 1959, Doris filed for divorce, which was finalized on December 7, 1960. No spousal or child support order was entered at that time. On November 4, 1961, Doris married Edwin Morris, who adopted the two children on November 29, 1962.
>
> Fourteen years passed. Then, in 1976, Doris petitioned the Pennsylvania court to reduce arrearages

> due on the October 2, 1959, support order to a final judgment. David did not appear at the Pennsylvania hearing. The Court entered judgment for $8,000 in Doris' favor. David did not appeal or move to vacate the judgment. Represented by the San Diego County District Attorney, Family Support Division, Doris had the Pennsylvania judgment transferred to California and entered as a money judgment under Code of Civil Procedure Section 1710.10 on September 30, 1976.
>
> David moved to vacate the California judgment under Section 1710.40. His attempt to raise a number of defenses to enforcement of the judgment was rebuffed by the trial court, finding the 1976 Pennsylvania judgment was entitled to full faith and credit under the United States Constitution and David's defenses to enforcement of the judgment should have been raised and litigated before the Pennsylvania court. The trial court then contradicted itself and addressed one of David's defenses, finding Doris' right to spousal support under the 1959 order terminated upon her divorce from David. The court reduced the award to $6,825.00 based on an arbitrary apportionment of the $50.00 per week as $25.00 per week for Doris and $25.00 per week for the children. David's motion for a new trial was denied, as was Doris' motion for reconsideration of the reduction of the judgment amount.

(Opinion, Petitioner's Brief, pp. A-2 - A-5.)

The California Court of Appeal reversed the judgment of the Superior Court finding that: (1) Federal law does not require and California law does not authorize the District Attorney to represent Doris in this litigation (*Id.* at p. A-12); and therefore the County of San Diego District Attorney lacked standing to enforce the 1976 Pennsylvania judgment (*Id.* at p. A-25); (2) that Doris' action falls under the revised Uniform Reciprocal Enforcement of Support Act of 1968 (RURESA) rather than under the general act for enforcement of sister state judgments, the

1974 Sister State Money-Judgment Act (SSMJA) (*Id.* at p. A-13); (3) that California law permits the judgment debtor to raise all defenses to enforcement of a support order under RURESA that he or she would be entitled to raise to enforcement of a support order issued by a court of this state (*Id.* at pp. A-18 - A-19); and (4) that David's defense of the California Statute of Limitations was applicable here and should have been considered by the trial court (*Id.* at pp. A-19 - A-21). The California Supreme Court denied Doris' petition for a hearing.

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ARGUMENT

A review on writ of certiorari is not a matter of right, but of judicial discretion, and should be granted only where there are special and important reasons therefor. (S.Ct. Rule 17.1.) A right and fair result was reached by the decision below. Petitioner admits that no cases contradict this opinion. (Petitioner's Brief, p. 9.) Respondent will demonstrate that there is no basis for further review by this court.

1. Petitioner argues that the Opinion controverts the intent of Congress in adding Part D to Subchapter IV of the Social Security Act, designed to deter fathers from abandoning their families to welfare. (*Id.* at pp. 16-17.) Petitioner fails to distinguish the facts of this case from the intent of Congress and the obligation of the participating state. As the Court below reasoned,

> in electing to participate in the AFDC Program, California did not, pursuant to Title IV-D, assume the

> obligation of collecting child support arrearages due parents and their adult children, who are not "dependent children" under Title IV. What it did assume, rather, was the obligation to provide child support collection services to families of *minor* children in present need of the arrearages for the children's maintenance, whether or not the families are receiving public assistance.

(*Id.* at p. A-8.)

State-provided collection of support obligations is clearly intended to deter parents from deserting their *dependent* children and forcing the needy family into welfare. As the Appellate Court concluded,

> what is involved here is not the enforcement of a parent's obligation to support minor children in immediate need of child support payments but the collection of a 14-year old debt owed an ex-wife for the support of now adult children. Federal law does not require, and California law does not authorize the District Attorney to represent Doris in this action. In seeking to enforce the 1976 Pennsylvania judgment on behalf of Doris and her two adult children, the District Attorney's office quite inappropriately acted as a collection agency, at the taxpayer's expense.

(*Id.* at p. A-12.)

2. Petitioner has omitted essential facts which change the nature of the legal issues. Petitioner's statement of the case omits the fact that Doris remarried and the children were adopted within a short period after the original 1959 support order, thereby ending the support period in question as of November 29, 1962. No issue of welfare is involved here. If Doris had attempted to enforce the support order fourteen years later directly pursuant to RURESA, California's ten-year Statute of Limitations

(Code of Civil Procedure Section 337.5(3)) would have barred its enforcement. Doris instead obtained a Pennsylvania judgment and entered it in California as a money judgment to SSMJA; nevertheless, the San Diego County District Attorney proceeded to collect the support arrearages. This fact situation is complex and makes the case a poor vehicle for review of the issues raised by Petitioner. There are no facts in this case to support Petitioner's theory that prosecution by the state agency in this situation would have the effect of deterring fathers from deserting their families. Instead, the case presents an attempt to collect a money debt at the expense of state taxpayers.

3. Petitioner contends that obligors will receive a windfall under the decision below by evading their child support obligations until the children have become emancipated. First, the decision concerns state collection begun after the children are adult, not prosecution initiated on behalf of minor children. Second, this argument is based on the assumption that a support decree becomes unenforceable when state agencies cease to collect the arrearages owed. This assumption is speculative and unsupported in any manner by Petitioner. Adults may continue to pursue collection of the support arrearages by private means. The deterrence value of collecting arrearages continues, to the extent it exists, if parents of adult children wish to exercise their rights without state assistance.

4. Petitioner attempts to create an issue of discrimination between welfare recipients and those who do not receive welfare. (*Id.* at pp. 23-29.) Yet, the Opinion below raises no issue based on the grant of welfare assistance. Petitioner relies on the case of *Greene v. Iowa District Court for Polk County* (1981) 312 N.W.2d 915 al-

though Petitioner distinguishes this case from the present case where no welfare aid was applied for and there was no assignment of the right to receive the support to a state agency. (*Id.* at p. 27.) Petitioner then errs in comparing the inapposite results of *Greene* and the Opinion. In *Greene,* and likewise in *In re Marriage of Shore* (1977) 71 Cal.App.3d 290, the issue was whether the agency could collect the support payments *assigned to it;* in this case, however, the issue is whether the state agency can act as a collection agency *on behalf of others,* given the circumstances. A state agency should be able to pursue its own right to payment; thus, different policies are involved.

5. Petitioner also contends that the Pennsylvania judgment deserves full faith and credit in California and its enforcement cannot be barred by any California statute of limitation. Petitioner fails to discuss in any detail the Appellate Court's analysis or such authority as California Code of Civil Procedure Section 1699(a), permitting a judgment debtor to raise all defenses to enforcement of a support order under RURESA that he or she would be entitled to raise to enforcement of a support order issued by a court of California. (See *Id.* at pp. A-18 - A-25.) A blanket condemnation of California statutory and judicial authority without analysis or specific argument does not raise a substantial question deserving the review of this Court. In finding that Doris' claim was made pursuant to RURESA and was precluded by the California statute of limitations (*Id.* at p. A-25), the Court below reached a right and fair result.

CONCLUSION

Petitioner fails to state special and important reasons for a review on writ of certiorari, and no substantial question is raised by the decision below.

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

DUKE, GERSTEL, SHEARER & BREGANTE
BRYAN R. GERSTEL
KAREN J. HEADLEY

Attorneys for Respondent
David G. Cohen